

SERVICE DATE - OCTOBER 6, 2004

SURFACE TRANSPORTATION BOARD

DECISION AND NOTICE OF INTERIM TRAIL USE OR ABANDONMENT

STB Finance Docket No. 29910 (Sub-No. 1)

D&I RAILROAD COMPANY—NOTICE OF INTERIM TRAIL USE AND
TERMINATION OF MODIFIED RAIL CERTIFICATE

Decided: October 4, 2004

In D&I Railroad Co.—Operation—Between Sioux Falls, SD, and Sioux City, IA—Modified Rail Certificate, Finance Docket No. 29910 (ICC served May 4, 1982), D&I Railroad Co. (D&I), was issued a modified certificate of public convenience and necessity (modified certificate) under 49 CFR 1150, subpart C, to operate approximately 97 miles of rail line owned by the State of South Dakota between Sioux Falls, SD, and Sioux City, IA.

On September 14, 2004, D&I filed a notice of its intent to terminate service under the modified certificate over a portion of the rail line described as the Sioux Falls segment.¹ On that same date, the South Dakota Department of Transportation (SDDOT) filed a request for issuance of a notice of interim trail use (NITU) under the National Trails System Act, 16 U.S.C. 1247(d), for the Sioux Falls segment of the rail line.² SDDOT submitted a statement indicating its willingness to assume financial responsibility for management of the right-of-way (ROW) as required at 49 CFR 1152.29, and acknowledged that the use of the ROW for trail purposes is subject to future reconstruction and reactivation for rail service. D&I stated its willingness to negotiate a trail use/rail banking agreement with SDDOT in its filing.

Trail use requests may be accepted as long as the Board retains jurisdiction over the ROW and the carrier is willing to enter into negotiations. Moreover, the Board has jurisdiction to issue a NITU in a proceeding where a notice is filed under 49 CFR 1150.24 to terminate operations under a modified certificate. See Wisconsin and Calumet Railroad Company, Inc.—Notice of Interim Trail Use and Termination of Modified Certificate, Finance Docket No. 30724 (Sub-No. 1) (ICC serve Aug. 8, 1989), and Sammamish Transportation Company—Notice of Interim Trail Use and Termination of Modified Certificate, STB Finance Docket No. 33398 (Sub-No. 1) (STB served Feb. 26, 1998).

¹ Under 49 CFR 1150.24, an operator must provide 60 days' notice of its intent to terminate service over a line covered by a modified certificate.

² The Sioux Falls segment extends 1.38 miles between milepost 70.1 (near East 11th Street) and milepost 71.48 (East Junction) in Sioux Falls.

Because SDDOT's request complies with the requirements of 49 CFR 1152.29, a NITU will be issued. The parties may negotiate an agreement during the 180-day period prescribed below. If the parties reach a mutually acceptable final agreement, no further Board action is necessary. If no agreement is reached within 180 days, the above-described portion of the line may be fully abandoned. See 49 CFR 1152.29(d)(1). Use of the ROW for trail purposes is subject to restoration for railroad purposes.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The request for a NITU under 16 U.S.C. 1247(d) is accepted.
2. If an interim trail use/rail banking agreement is reached, it must require the trail user to assume for the term of the agreement, full responsibility for management of, for any legal liability arising out of the transfer or use of (unless the user is immune from liability, in which case it need only indemnify the railroad against any potential liability), and for the payment of any and all taxes that may be levied or assessed against, the ROW.
3. Interim trail use/rail banking is subject to the future restoration of rail service and to the user's continuing to meet the financial obligations for the ROW.
4. If interim trail use is implemented, and subsequently the user intends to terminate trail use, it must send the Board a copy of this decision and notice and request that it be vacated on a specified date.
5. If an agreement for interim trail use/rail banking is reached by April 4, 2005, interim trail use may be implemented. If no agreement is reached by that time, the above-described line may be fully abandoned.
6. This decision is effective on its service date.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams
Secretary